

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DELVARIS BOOKER,

Plaintiff,

v.

JOHNSONVILLE SAUSAGE LLC,

Defendant.

Case No. 16-CV-1047-JPS

ORDER

Plaintiff brought this action against his former employer, raising claims of employment discrimination based on his race. (Docket #1). Before the Court is Plaintiff's motion for leave to amend his complaint pursuant to Federal Rule of Civil Procedure 15. (Docket #18). In the motion, Plaintiff lists several allegations that he wishes to add to his complaint, including allegations about the time span of the racial discrimination he allegedly suffered and a new claim that he was retaliated against in response to his complaints about racial discrimination. *Id.*

Without deciding the merits of Plaintiff's request for leave to amend his complaint, the motion must be denied in its present form. Plaintiff's filing is not in itself sufficient to constitute an amended complaint. Although Plaintiff would like the Court to simply add his new allegations into the case, this is not the proper procedure for amending a pleading. An amended complaint supersedes the prior complaint and must be complete in itself without reference to the original complaint. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056–57 (7th Cir. 1998). In *Duda*, the Seventh Circuit emphasized that in such instances, the "prior pleading is in effect withdrawn as to all matters not restated in the amended pleading[.]" *Id.* at 1057 (citation omitted); *see also Pintado v. Miami-Dade Housing Agency*,

501 F.3d 1241, 1243 (11th Cir. 2007) (“As a general matter, ‘[a]n amended pleading supersedes the former pleading; the original pleading is abandoned by the amendment, and is no longer a part of the pleader’s averments against his adversary.’”) (quoting *Dresdner Bank AG, Dresdner Bank AG in Hamburg v. M/V OLYMPIA VOYAGER*, 463 F.3d 1210, 1215 (11th Cir. 2006)).

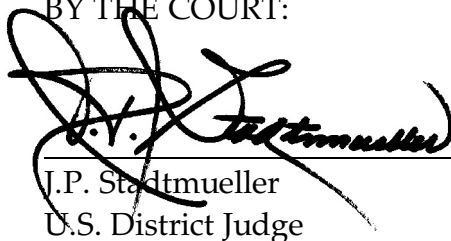
If Plaintiff wishes to add new factual allegations or legal claims to this action, he must file an amended complaint that is complete in itself and which includes those new allegations or claims. Additionally, because the time for Plaintiff to amend his complaint as a matter of right has expired, *see* Fed. R. Civ. P. 15(a)(1), he should first seek Defendant’s written consent for leave to file the amended complaint, *see id.* 15(a)(2). If Defendant does not consent, Plaintiff may file a motion for leave to file the amended complaint with the Court. *See id.*

Accordingly,

IT IS ORDERED that Plaintiff’s motion for leave to amend his complaint (Docket #18) be and the same is hereby **DENIED without prejudice**.

Dated at Milwaukee, Wisconsin, this 23rd day of March, 2017.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge